IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA L. ALANIZ,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	5:15-CV-00587-RP
LAW OFFICE OF JOSEPH ONWUTEAKA, P.C. AND SAMARA PORTFOLIO MANAGEMENT, LLC	§	
	§	
	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiff's Motion for Default Judgment and brief in support. (Dkt. 7). After reviewing the pleadings, relevant case law, as well as the entire case file, the Court issues the following order.

BACKGROUND

Plaintiff Maria Alaniz entered into an online loan agreement to pay for the funeral expenses of a relative. (Pl.'s Original Compl., Dkt. 1, ¶ 7). She defaulted on the loan, and her debt "pass[ed] through the hands of several purchasers and sellers" before Defendant Samara Portfolio Management, LLC [*hereinafter* "Samara"] purchased it. *Id.* ¶ 8. Joseph Onwuteaka, who is president of both the Law Office of Joseph Onwuteaka, P.C. [*hereinafter* "Law Office"] and Samara, filed suit to collect the debt in Bexar County Justice Court Precinct 3. *Id.* ¶ 8 – 9. Plaintiff, who has lived at the same address for almost three decades, does not reside in the judicial district covered by Precinct 3. *Id.* ¶ 9.

Plaintiff filed suit against Defendants on July 16, 2015. In her Complaint, she alleged that Defendant violated the Federal Fair Debt Collection Practices Act ("FDCPA") by filing suit in an improper jurisdiction. *Id.* ¶ 10. She further alleged that Defendants violated the Texas Fair Debt

Collection Act by collecting debts without obtaining a surety bond and filing it with the Secretary of State. *Id.* ¶ 11. Plaintiff properly served both defendants. (Dkt. 3). After defendants failed to appear, the Court ordered Plaintiff to move for default. (Dkt. 4). Plaintiff moved for entry of default on November 11, 2015, and the Clerk's Office entered default on November 12. Plaintiff moved for Default Judgment on November 16, 2015, and Defendants failed to timely respond to Plaintiff's motion. *See* W.D. Tex. Local Court Rule CV – 7(e) ("A response to a dispositive motion shall be filed not later than 14 days after the filing of the motion."). Accordingly, Plaintiff's motion is ripe for review.

LEGAL STANDARD

A defendant's default "does not in itself warrant the court entering a default judgment. There must be a sufficient basis in the pleadings for the judgment entered. . . . The defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law. In short, . . . a default is not treated as an absolute confession of the defendant of his liability and of the plaintiff's right to recover." *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also* 10A Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE § 3688 at 63 ("Even after default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.").

DISCUSSION

Under the FDCPA,

> [a]ny debt collector who brings any legal action on a debt against any consumer shall . . . bring such action only in the judicial district or similar legal entity . . . in which such consumer resides at the commencement of the action. 15 U.S.C. § 1692i(a).

Plaintiff's Original Complaint asserts that Defendant Law Office of Joseph Onwuteaka "is a debt collector as that term is defined by 15 U.S.C. § 1962a(6) . . . and Texas Finance Code §

392.001(6) and (7)." (Pl.'s Original Compl., Dkt. 1, ¶ 6).[1] The Complaint further claims that Plaintiff "is a consumer as that term is defined by 15 U.S.C. § 1692a(3) and Texas Finance Code § 392.001(1)."[2]

The FDCPA provides that a debt collector seeking to recover a consumer debt must "bring such action only in the judicial district or similar legal entity . . . in which such consumer signed the contract sued upon[ ] or . . . in which such consumer resides at the commencement of the action." 15 U.S.C. § 1692i(a)(2); *see also Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440, 442 (5th Cir. 2013). Plaintiff alleges that Onwuteaka violated the provision "by bringing an action in Precinct 3, where Alaniz did not reside at the time of the commencement of the action." (Pl.'s Original Compl., Dkt. 1, ¶ 9). Because suits brought in justice court generally "shall be brought in the county *and precinct* in which one or more defendants reside," TEX. CIV. PRAC. & REM. CODE § 15.082 (emphasis added), Onwuteaka failed to bring the action "in the judicial district . . . in which [Alaniz] resides." *Cf. Suesz v. Med-1 Solutions, LLC*, 757 F. 3d 636, 641 (7th Cir. 2014) (finding that the proper "judicial district" under the FDCPA is "the smallest geographic area relevant to venue in the court system in which the case is filed").

Plaintiff further alleges Defendants violated the Texas Fair Debt Collection Act. Texas Finance Code § 392.101 requires that debt collectors who employ non-attorney personnel to contact consumers obtain a surety bond and file it with the Secretary of State before collecting debts. Plaintiff asserts that Defendant Law Office "sent communications signed by a non-attorney." (Pl.'s Original Compl., Dkt. 1, ¶ 11). Plaintiff further alleges that "the Texas Secretary of State does not have a bond on file for Onwuteaka." *Id.*

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[1] Under the FDCPA, a "debt collector" "means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect . . . debts." 15 U.S.C. § 1962a(6). Plaintiff's Original Petition cites a Fifth Circuit case to which Defendant Law Office is a party. *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440, 442 (5th Cir. 2013). Plaintiff's memorandum in support of her motion for default judgment also cites an action by the Texas Attorney General against Defendants Samara and Law Office, and against Onwuteaka individually, alleging "approximately 1,500 lawsuits" which violated debt collection laws.

[2] "The term 'consumer' means any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a(3).

The Finance Code further prohibits "use [of] an independent debt collector if the creditor has actual knowledge that the independent debt collector repeatedly or continuously engages in acts or practices that are prohibited by [the Finance Code]." TEX. FIN. CODE § 392.306. Plaintiff's Original Complaint cites a Fifth Circuit case to which Defendant Law Office is a party. *Serna v. Law Office of Joseph Onwuteaka, P.C.*, 732 F.3d 440, 442 (5th Cir. 2013). Plaintiff's memorandum in support of its motion for default judgment also cites an action by the Texas Attorney General against Defendants Samara and Law Office, and against Onwuteaka individually, alleging "approximately 1,500 lawsuits" which violated debt collection laws. (Pl.'s Mot. Def. J., Dkt. 7, ¶ 5). Plaintiff alleges that, because Samara "is owned by and has been party to other suits brought against Onwuteaka," "[i]t has actual knowledge that Onwuteaka repeatedly or continuously engages in violations of Chapter 392 of the Texas Finance Code." (Pl.'s Original Compl., Dkt. 1, ¶ 12).

By virtue of its default, Defendant has admitted to the truth of these allegations. The Court finds that Plaintiff's "unchallenged facts constitute a legitimate cause of action" under the FDCPA and default judgment is appropriate.[3] 10A Wright, Miller & Kane, FEDERAL PRACTICE AND PROCEDURE § 3688 at 63.

RELIEF

The Court next turns to the question of relief. As a general rule, courts may enter a default judgment awarding damages without a hearing only if the amount of damages is a liquidated sum, an amount capable of mathematical calculation, or an amount demonstrated by detailed affidavits. *James v. Frame*, 6 F.3d 307, 310 (5th Cir. 1993); *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979). It is a matter within the court's discretion whether

[3] Plaintiff makes out a claim under the Texas Fair Debt Collection Act but asks for no relief pursuant to it. Accordingly, the Court cabins the remainder of this discussion to the Defendants' violation of the FDCPA.

to hold a hearing before awarding damages in a default judgment. See FED. R. CIV. P. 55(b)(2) (in determining amount of damages entered in default, court may conduct such hearings or order such references to determine amount of damages "as it deems necessary and proper"); *James*, 6 F.3d at 310 (district court has wide latitude in deciding whether to require evidentiary hearing before entering default judgment). Here, Plaintiff has not requested a hearing and has asked only for additional statutory damages. Accordingly, the Court finds a hearing is not necessary to calculate damages.

i. Additional Damages

Under 15 U.S.C. § 1692k(a)(1) of the FDCPA, an individual may be awarded actual damages sustained by a violation of the Act. Under 15 U.S.C § 1692k(a)(2)(A) an individual may recover additional damages not to exceed $1,000. Plaintiff does not seek actual damages. Instead, Plaintiff asks the Court to award $1,000 of additional damages as allowed by law.

In determining the amount of liability, the FDCPA asks the Court to consider, "among other relevant factors," "the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional." 15 U.S.C. § 1692k(b). As Plaintiff has made a prima facie showing of liability under the FDCPA, and as Defendants have a history of noncompliance with the FDCPA, the Court finds that the award of $1,000 additional damages is appropriate to vindicate Plaintiff's rights and deter further wrongful conduct by Defendants.

ii. Attorney's Fees and Costs

Under the FDCPA, a successful litigant can recover attorney's fees and costs. 15 U.S.C. § 1692k(a)(3). Plaintiff has established a prima facie case and shown Defendants' liability for additional damages. Accordingly, Plaintiff is a successful litigant under the terms of the FDCPA and is entitled to attorney's fees.

Plaintiff requests attorney's fees of $1,770 and costs of $549.06. In support of the request Plaintiff presents an affidavit from her counsel, William M. Clanton. Mr. Clanton estimates his fee as $1,770, based on approximately 4.7 hours of work at a rate of $300 per hour. (Pl.'s Mot. Def., Attached Affidavit ("Clanton Aff.")).

The determination of a fees award is a two-step process. *See Heidtman v. Cnty. of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999). First, a court calculates a "lodestar" figure "by multiplying the number of hours reasonably expended by an appropriate hourly rate in the community for such work." *Id.* In making that calculation the court considers whether the attorney demonstrated proper billing judgment by "writing off unproductive, excessive, or redundant hours." *Walker v. U.S. Dep't of Hous. & Urban Dev.*, 99 F.3d 761, 769 (5th Cir. 1996). After calculating the lodestar, the court may increase or decrease it based on a number of factors including the time, labor and skill required, the novelty and difficulty of the issues, the amount involved and results obtained, as well as the award in similar cases. *Heidtman*, 171 F.3d at 1043.

In his affidavit Clanton states that he expended 4.7 hours on this litigation. Clanton also details his experience and provides evidence of the fees charged by other attorneys in similar cases. (Clanton Aff. ¶ 10 - 12). Accordingly, the Court finds no adjustment to Clanton's figures is necessary and finds an award of $1,770 in attorney's fees is appropriate. Pursuant to the FDCPA, the Court also awards Plaintiff such other reasonable costs as she has incurred.

CONCLUSION

The Court hereby GRANTS Plaintiff's Motion for Default Judgment (Dkt. 7). Specifically, Defendants shall pay Plaintiff: (1) $1,000 in additional damages pursuant to 15 U.S.C § 1692k(a)(2)(A); plus (2) $1,770 in reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3); plus (3) costs in an amount to be determined pursuant to the procedure specified in W.D. Tex. Local Court Rule CV – 54.

IT IS FURTHER ORDERED that Defendants shall pay post-judgment interest, to be calculated and compounded pursuant to 28 U.S.C. § 1961, until paid in full.

All other relief not granted herein is DENIED.

Signed December 4, 2015.

ROBERT L. PITMAN
UNITED STATES DISTRICT JUDGE